

PHILLIP A. TALBERT
Acting United States Attorney
AARON D. PENNEKAMP
ROSS PEARSON
Assistant United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814
Telephone: (916) 554-2700
Facsimile: (916) 554-2900

Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAWRENCE MACKEN,

Defendant.

CASE NO. 2:20-CR-00023 KJM

STIPULATION REGARDING USE OF
VIDEOCONFERENCING DURING PLEA
HEARING; FINDINGS AND ORDER

DATE: October 25, 2021
TIME: 9:00 a.m.
COURT: Hon. Kimberly J. Mueller

BACKGROUND

A change of plea is currently scheduled in this matter for October 25, 2021. On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The CARES Act empowered the Judicial Conference of the United States and Chief District Judges to authorize plea and sentencing hearings by video or telephonic conference when 1) such hearings “cannot be conducted in person without seriously jeopardizing public health and safety;” and 2) “the district judge in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice.” *Id.*; Pub. L. 116-23 § 15002(b)(2).

On March 29, 2020, the Judicial Conference of the United States made the findings required by the CARES Act, concluding that “emergency conditions due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601, et seq.) with respect to the Coronavirus Disease 2019 (COVID-19) have materially affected and will materially affect the

1 functioning of the federal courts generally.”

2 On June 29, 2020, the Chief Judge of this District, per General Order 620, also made the findings
3 required by the CARES Act: “[F]elony pleas under Rule 11 of the Federal Rules of Criminal Procedure
4 and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be conducted
5 in person without seriously jeopardizing public health and safety.” The findings in this and other orders
6 have been extended on numerous occasions—most recently on September 28, 2021 in General Order
7 635. Accordingly, the findings of the Judicial Conference and this Court’s General Orders establish that
8 individual judges have the authority to determine that plea and sentencing hearings cannot safely take
9 place in person.

10 In order to authorize plea hearings by remote means, however, the CARES Act—as implemented
11 by, for example, General Order 620—also requires district courts in individual cases to “find, for
12 specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without
13 serious harm to the interests of justice.” General Order 620 further requires that the defendant consent
14 to remote proceedings. Finally, the remote proceeding must be conducted by videoconference unless
15 “videoconferencing is not reasonably available.” In such cases, district courts may conduct hearings by
16 teleconference.

17 The parties hereby stipulate and agree that each of the requirements of the CARES Act and
18 General Order 620 have been satisfied in this case. They request that the Court enter an order making
19 the specific findings required by the CARES Act and General Order 620. Specifically, for the reasons
20 further set forth below, the parties agree that:

21 1) The plea hearing in this case cannot be further delayed without serious harm to the
22 interest of justice, given the public health restrictions on physical contact existing in the Eastern District
23 of California; and

24 2) The defendant waives his physical presence at the hearing and consents to remote hearing
25 by videoconference and counsel joins in that waiver.

26 **STIPULATION**

27 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
28 through defendant’s counsel of record, hereby stipulate as follows:

1 1. The Governor of the State of California declared a Proclamation of a State of Emergency
2 to exist in California on March 4, 2020.

3 2. On March 13, 2020, the President of the United States issued a proclamation declaring a
4 National Emergency in response to the COVID-19 pandemic.

5 3. In their continuing guidance, the Centers for Disease Control and Prevention (CDC) and
6 other public health authorities have suggested the public avoid social gatherings in groups of more than
7 10 people and practice physical distancing (within about six feet) between individuals to potentially
8 slow the spread of COVID-19. The virus is thought to spread mainly from person-to-person contact.

9 4. These social distancing guidelines—which are essential to combatting the virus—are
10 generally not compatible with holding in-person court hearings.

11 5. On March 17, 2020, this Court issued General Order 611, noting the President and
12 Governor of California’s emergency declarations and CDC guidance, and indicating that public health
13 authorities within the Eastern District had taken measures to limit the size of gatherings and practice
14 social distancing. The Order suspended all jury trials in the Eastern District of California scheduled to
15 commence before May 1, 2020.

16 6. On March 18, 2020, General Order 612 issued. The Order closed each of the courthouses
17 in the Eastern District of California to the public. It further authorized assigned district court judges to
18 continue criminal matters after May 1, 2020 and excluded time under the Speedy Trial Act. General
19 Order 612 incorporated General Order 611’s findings regarding the health dangers posed by the
20 pandemic.

21 7. On April 16, 2020, the Judicial Council of the Ninth Circuit declared a judicial
22 emergency in this District pursuant to 18 U.S.C. § 3174(d), based on the District’s “critically low
23 resources across its heavy caseload.” The report accompanying the Judicial Council’s declaration
24 analyzed the public safety dangers associated with the COVID-19 pandemic and examined both the
25 District’s caseload (the District currently ranks first in the Ninth Circuit and eighth nationally in
26 weighted filings) and its shortage of judicial resources (the District is currently authorized only six
27 district judges; two of those positions are currently vacant and without nominations). The report further
28 explained that a backlog of cases exists that “can only start to be alleviated” when the CDC lifts its

1 guidance regarding gatherings of individuals.

2 8. On April 17, 2020, General Order 617 issued, continuing court closures through June 1,
3 2020 and authorizing further continuances of hearings and exclusions under the Speedy Trial Act.

4 9. On May 13, 2020, General Order 618 issued, continuing court closures until further
5 notice and authorizing further continuances of hearings and exclusions under the Speedy Trial Act.

6 10. On May 26, 2021, General Order 631 issued, which gave notice of the planned reopening
7 of the courthouses in this district in June 2021, but which allowed “each Judge [to] determine whether to
8 hold proceedings over which that Judge presides in person in a courtroom or by telephone or
9 videoconference,” including “criminal proceeding[s].”

10 11. In this matter, Mr. Macken has an interest in timely resolving his case by proceeding to
11 the Change of Plea hearing via video-teleconference. In light of the ongoing coronavirus pandemic,
12 were this Court to delay the hearing until a time when the proceeding may be held in person, Mr.
13 Macken’s interest in timely resolving his case would be thwarted.

14 12. The plea hearing in this case accordingly cannot be further delayed without serious harm
15 to the interests of justice.

16 13. Mr. Macken understands he has a right to appear in person for the Change of Plea hearing
17 and affirmatively waives that right so to expedite the proceeding.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 14. Under CARES Act § 15002(b), defendant consents to proceed with this hearing by video-
2 teleconference. Counsel joins in this consent.

3 IT IS SO STIPULATED.

4
5 Dated: October 22, 2021

6 PHILLIP A. TALBERT
7 Acting United States Attorney

8 /s/ AARON D. PENNEKAMP
9 AARON D. PENNEKAMP
10 Assistant United States Attorney

11 Dated: October 22, 2021

12 /s/ HANNAH LABAREE
13 HANNAH LABAREE
14 Counsel for Defendant
15 LAWRENCE MACKEN

FINDINGS AND ORDER

1. The Court adopts the findings above.

2. Further, the Court specifically finds that:

a) The plea hearing in this case cannot be further delayed without serious harm to the interest of justice; and

b) The defendant has waived his physical presence at the hearing and consents to remote hearing by videoconference.

3. Therefore, based on the findings above, and under the Court's authority under § 15002(b) of the CARES Act and General Order 635, the plea hearing in this case will be conducted by videoconference.

IT IS SO FOUND AND ORDERED this 25th day of October 2021.


CHIEF UNITED STATES DISTRICT JUDGE